



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

JUL 24 2017

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Randall Lindley
Lindley Dairy
7020 West Ustick Road
Meridian, Idaho 83642

Re: Notice of Intent to File Administrative Complaint for Violation of the Clean Water Act
Opportunity to Confer Prior to Filing

Dear Mr. Lindley:

The U.S. Environmental Protection Agency (EPA) has documented violations of the Clean Water Act at the Lindley Dairy facility located at 7020 West Ustick Road, in Meridian, ID. This concerns the discharges from your waste lagoon into North Eightmile Aqueduct, one of which was observed by the Idaho State Department of Agriculture in July 2014. The Department subsequently referred this matter to EPA for enforcement. The purpose of this notice is to inform you that EPA is prepared to initiate an enforcement action for these violations and to offer you the opportunity to discuss this matter with EPA prior to the filing of a complaint.

Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 40 C.F.R. Part 19 authorize EPA to assess administrative penalties for violations of the Clean Water Act of up to \$16,000 per day per violation or to bring a civil action in federal district court seeking civil penalties of up to \$37,500 per day per violation, for violations occurring on or before November 2, 2015. Additionally, Section 309 of the Clean Water Act authorizes EPA to issue administrative orders requiring specific measures be taken to ensure compliance with the Clean Water Act and to remedy harm or risk caused by past violations.

Under the terms of Section 309, EPA must consider the following factors in determining the amount of penalty it will seek: the nature, circumstances, extent and gravity of the violation(s); ability to pay; any prior history of such violations; the degree of culpability; economic benefit or savings (if any) resulting from the violation; and such other matters as justice may require.

Please refer to EPA's *1995 Interim Clean Water Act Settlement Penalty Policy for Violations* for guidance on appropriate penalties in settlement of civil administrative and judicial actions at <https://www.epa.gov/sites/production/files/documents/cwapol.pdf>

In general, EPA favors pre-filing discussions, which help ensure that we have all relevant information and may lead to a resolution that avoids the time and expense of litigation. If we are able to reach a settlement, we would resolve the case with an administrative consent agreement and final order, and EPA would not file a complaint. Once a consent agreement and final order is signed by all parties, EPA generally issues a press release announcing the settlement.

If Lindley Dairy and EPA do not reach a settlement **within 90 days of this notice**, EPA will either file an administrative complaint and the case will be assigned to an administrative law judge or refer the matter to the Department of Justice for filing in federal district court. EPA reserves the right to seek the maximum allowable penalty in litigation of this case should Lindley Dairy and EPA fail to reach a settlement in the time period allotted.

To reach settlement within 90 days, we will need to begin prefiling negotiations within 30 days. If you wish to set up an initial meeting to discuss this matter, please contact William McLaren in the Office of Regional Counsel at (206) 553-1938 **within 14 days of this notice**. EPA is willing to meet with you at our Seattle office or by conference call. If we do not hear from you within 14 days, EPA intends to initiate formal enforcement action unilaterally.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff KenKnight", written in a cursive style.

Jeff KenKnight, Manager
Water and Wetlands Enforcement Unit
U.S. EPA Region 10
Office of Compliance and Enforcement

cc: William McLaren
Office of Regional Counsel

Mitch Vermeer
Idaho State Department of Agriculture